

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

PAUL R. BUMSTEAD,

Petitioner,

v.

Civil Action No. 2:10 CV 77
(BAILEY)

JAMES N. CROSS, Warden of USP Hazelton,

Respondent.

ORDER

On June 16, 2010, *pro se* Petitioner Paul R. Bumstead filed a Petition for Writ of *Habeas Corpus* Pursuant to 28 U.S.C. § 2241 Seeking “Emergency Relief” (Doc. 1). The case was referred to United States Magistrate Judge David J. Joel for initial review and report and recommendation in accordance with Rule 2 of the Local Rules of Prisoner Litigation Procedure.

On August 9, 2010, Magistrate Judge Joel issued a Report and Recommendation (“R&R”) (Doc. 10) wherein he recommended that the petitioner’s § 2241 Petition be dismissed without prejudice to his right to file a ***Bivens*** action or to seek relief in the United States District Court for the District of Massachusetts.

In his R&R, Magistrate Judge Joel provided the parties with fourteen (14) days from the date they were served with a copy of the R&R in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon the R&R.

The Court’s review of the docket in the above-styled civil action reveals that the R&R

was served on the petitioner on August 10, 2010, and that, to date, no objections to the R&R have been filed. Accordingly, it would appear that this matter is now ripe for review.

Upon consideration of Magistrate Judge Joel's August 9, 2010, Report and Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Report and Recommendation (Doc. 10), be, and the same is hereby, **ADOPTED** for the reasons more fully stated therein. Accordingly, it is

ORDERED that the petitioner's Petition for Writ of *Habeas Corpus* Pursuant to 28 U.S.C. § 2241 Seeking "Emergency Relief" (Doc. 1) be, and the same is hereby, **DENIED** and **DISMISSED WITHOUT PREJUDICE** to the petitioner's right to file a *Bivens* action or to seek relief in the United States District Court for the District of Massachusetts.

It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

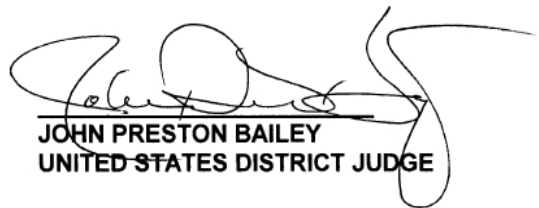
ORDERED that, should the petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within sixty (60) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the petitioner may, in accordance with the provisions

¹The failure of a party to file an objection to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See ***Wells v. Shriners Hospital***, 109 F.3d 198, 199-200 (4th Cir. 1997); ***Thomas v. Arn***, 474 U.S. 140, 148-153 (1985).

of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* petitioner and to counsel of record in the above-styled civil action.

DATED: December 13, 2010.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE